

**City Of Milwaukee**  
**Department Of Public Works**  
**Emerging Business Enterprise Provisions**

I. General

- A. In accordance with Chapter 360 of the Milwaukee Code of Ordinances, Emerging Business Enterprise (EBE) participation is required in all contracting activities of the Department of Public Works. The ordinance requires that certified EBEs be utilized for 25% of the total dollars annually expended through prime contracts or subcontracts. To that end, the Commissioner of Public Works, as a contracting officer for the City, requires all bidders to utilize EBEs as subcontractors and material suppliers on all contracts. For this contract, bidders are required to achieve a minimum (refer to Official Notice for requirements) EBE participation.
- B. The prime contractor shall prepare and submit accurate and timely EBE utilization forms and reports to the Department of Public Works. The reports shall include, but not be limited to, project participation (Form A), monthly utilization (Form D), and EBE subcontractor payment certification (Form E) forms as directed. Failure to submit the required forms and reports to the Department of Public Works may result in disqualification of future bids, delay of payments, or other appropriate sanctions. Final contract payments will not be made until final EBE utilization reports and EBE subcontractor payment certification forms are on file with the Department of Public Works.
- C. During the performance of this contract, the Department of Public Works reserves the right to conduct compliance reviews. If the contractor is not in compliance with the specifications, the Commissioner of Public Works will notify the contractor in writing of the corrective action that will bring the contractor into compliance. If the contractor fails or refuses to take corrective action as directed, the Department of Public Works may take one or more of the actions listed below:
  - 1. Terminate or cancel the contract, in whole or in part.
  - 2. Consider possible debarment of the prime contractor from bidding.
  - 3. Withhold payments on the contract.
  - 4. Any other remedy available to the City at law or in equity.

II. Definitions

- A. "EMERGING BUSINESS ENTERPRISE" (EBE) means a small business concern that is owned, operated and controlled by one or more individuals who are at a disadvantage. The individuals must have day-to-day operational and managerial control and interest in capital, financial risks and earnings commensurate with the percentage of their ownership.
- B. "INDIVIDUAL AT A DISADVANTAGE" means a person who is a citizen or lawful permanent resident of the United States and who has experienced and who continues to experience substantial difficulty in achieving business-related success as defined in subsection 5 of Chapter 360 of the Milwaukee Code of Ordinances.

- C. "OWNED, OPERATED AND CONTROLLED" means a business which is one of the following:
1. A sole proprietorship legitimately owned and operated and controlled by an individual as defined in subsection 12.
  2. A partnership or joint venture legitimately owned, operated and controlled by individuals who are at a disadvantage and who own at least 51% of the beneficial ownership interests in the enterprise and who hold at least 51% of the voting interests of the enterprise.
  3. A corporation legitimately owned, operated and controlled by one or more individuals who are at a disadvantage and who own at least 51% of the outstanding shares and who hold at least 51% of the voting interests of the corporation.

III. EBE Utilization Requirements

- A. Each prime contractor shall utilize EBE to a minimum of (refer to Official Notice for requirements) on this contract. Note that the prime contractors shall be required to attain EBE participation on their base bid excluding specified allowances, alternatives, and change orders. EBE commitments relative to contract award shall be based upon the approved EBE Participation Form (Form A).
- B. The determination of EBE utilization shall be based on the following criteria:
1. The firms identified as EBE by the prime contractor on the EBE Participation Form must be certified by the Emerging Business Enterprise Program prior to bid opening.
  2. The prime contractor shall be credited for the entire expenditure to EBE firms only if all of the identified scope of work is performed directly by the certified EBE firm.
  3. The prime contractor shall be credited for the entire expenditure to EBE manufacturer only if the manufacturer produces goods from raw materials or substantially alters them for resale. Only 20% of the EBE goals may be expended for EBE suppliers that do not manufacture products they supply.
  4. The prime contractor shall count toward the EBE requirement only those payments to EBEs who perform a commercially-useful function in the actual performance of the contract. While that generally means an EBE should be engaged in direct contract work, a "commercially-useful function" may also include management of a third tier subcontractor. For example, while an EBE trucking subcontractor is always expected to perform some direct work on the project, in some cases it may become necessary to subcontract work out to one or more third tier subcontractors. If a third tier subcontractor is also an EBE, the full amount of the work performed by that third tier EBE can be counted toward EBE participation. However, if the third party subcontractor is not an EBE, the prime contractor may only count 20% of the amount being subcontracted to the third tier non-EBE subcontractor. EBEs are required to notify the Department of Public Works if they subcontract out work so that the Department can determine how much, if any, of the subcontracted work can be counted toward the EBE requirement. The Commissioner of Public Works will make the final determination and evaluation of whether the EBE is performing a commercially-useful function.

- C. The contractor, by signing and submitting a bid, certifies that the contractor understands the provisions of Chapter 360 and knows of and intends to comply with them. The completed EBE Participation Form (Form A) must be submitted by the apparent low bid contractor within three (3) working days after the date of the bid opening.
1. Information on Form A shall include, but not be limited to:
    - a. The names, addresses, telephone numbers and contact person names for the certified EBE contractors that will participate on the project as subcontractors or suppliers;
    - b. A description of the scope of work to be performed by the EBE on this project; and
    - c. The EBE contractor dollar value(s) and corresponding percentages that the dollar values represent of the total contract amount.
  2. Listing an EBE on the Participation Form shall constitute a representation that the contractor has communicated directly with the EBEs listed. If awarded the contract, the bidder will enter into a subcontract with the firm for the portion of the work listed.
  3. EBE participation is an element of bid responsiveness. Failure to meet the specified EBE requirements will render the bid unresponsive. The contract may then be awarded to the next apparent low bidder. Under certain circumstances, failure to meet specified EBE requirements after submission of an apparent low bid may result in surrender of the bidder's bid bond.
  4. Only EBEs that have been certified by the Emerging Business Enterprise Program may be listed on the EBE Participation Form and counted towards the percentage requirements on this project. A listing of the currently City certified EBE firms is maintained at:

Emerging Business Enterprise Program Office  
200 East Wells Street  
City Hall, Room 606  
Milwaukee, Wisconsin 53202  
Phone: (414) 286-5553  
FAX: (414) 286-8752
- D. After execution of the contract, if for any reason an EBE cannot perform, the prime contractor shall contact the Commissioner of Public Works for approval to substitute another certified EBE firm. The prime contractor must submit a written request for substitution which specifies the reasons for the request. Approval must be obtained prior to making substitutions. Any difference in the cost occasioned by such substitution shall be borne by the prime contractor. If the prime contractor cannot find another certified firm to do the work at a comparable price, a non-EBE firm may be substituted with the approval of the Commissioner of Public Works.
- E. If the prime contractor has a problem in meeting the EBE requirements or if any other problems relative to EBE(s) arise during the completion of this project, the prime contractor shall immediately contact the Commissioner of Public Works.

- F. Certification from programs other than the Emerging Business Enterprise Program is neither accepted by the City of Milwaukee nor do they have any bearing whatsoever on the eligibility criteria established by the City of Milwaukee.
- G. Right to Appeal.

All contracts awarded under ss.7-14-2 and 7-22 of the City Charter shall be awarded by the Commissioner of Public Works to the lowest responsible bidder determined in accordance with applicable City ordinances for participation of the Emerging Business Enterprise Program. Following the opening of any bid involving a determination under applicable City ordinances for participation of Emerging Business Enterprises, the Commissioner of Public Works shall make a written recommendation as to the lowest responsible bidder and notify all bidders by publication in an official City newspaper as to the content of the written recommendation. Any bidder who objects to the recommendation on grounds of determinations made under applicable City ordinances for participation of Emerging Business Enterprises may appeal the recommendation on such grounds by filing a written appeal with the Commissioner of Public Works within five (5) working days of the date of publication. The appeal shall state the specific objection to the recommendation, include supporting documentation and specify an alternative recommendation. The Commissioner of Public Works shall schedule a hearing before an appeals committee consisting of the Chair of the Economic Development Committee or the Chair's designee, a member of the Economic Development Committee selected by the Chair and the Director of the Emerging Business Enterprise Program to be held within five (5) days of receipt of the appeal. The Committee shall have authority by majority vote to affirm or set aside the recommendation of the Commissioner of Public Works and its decision in this regard shall be final. In the event a timely appeal, meeting the requirements above is not filed, or the Committee affirms the Commissioner's recommendation following a timely appeal, meeting the requirements above, the Commissioner shall make an award in accordance with the recommendation.